

## Asia-Pacific Region: APEC and ASEAN

### I. General Survey

The year 1995 showed steady progress in economic integration efforts in the Asia-Pacific region.

The Asia-Pacific Economic Cooperation (APEC) was the only region-wide intergovernmental cooperation scheme established in 1989. In 1995, APEC members held their seventh ministerial meeting from November 16 to 17, followed by the third informal economic leaders' meeting (summit meeting) from November 18 to 19, at Osaka, Japan. Both meetings reconfirmed and continued APEC's members' commitment to regional liberalization set out in the 1994 Bogor Declaration.<sup>1</sup> In these meetings, APEC members reaffirmed their original goals, such as flexibility and voluntariness, for their diverse membership, rather than a more rigid, compulsory arrangement. The Philippine president will implement these programs this year.

Subregional arrangements in the Asia-Pacific region also showed steady progress. The Association of Southeast Asia Nations (ASEAN) continued to enhance regional cooperation. The single most significant event about ASEAN may have been the accession of Vietnam, still a socialist state, on July 28. Still another significant event occurred in 1995. The United States and Vietnam resumed diplomatic relations on August 5.<sup>2</sup> During ASEAN's fifth summit meeting at Bangkok on December 14 and 15, ASEAN finally extended membership to the Union of Myanmar, Cambodia, and Laos, bringing the membership total to ten.<sup>3</sup> Members also issued the Bangkok Declaration on December 15 to accelerate and expand their internal liberalization efforts under the ASEAN Free Trade Area (AFTA).<sup>4</sup> They agreed to reduce regional tariffs to 0 to 5 percent by the year

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1. APEC Secretariat, 1995 Joint Statement, Action Agenda, 1995.

2. JAPAN ECONOMIC JOURNAL (Tokyo), August 6, 1995, at 4.

3. *Id.* December 14, 1995, at 2.

4. *Id.* December 16, 1995, at 9.

2000 (the deadline was originally 2008, and later, 2003).<sup>5</sup> They also agreed to eliminate nontariff barriers at the regional level and to expand their liberalization efforts into service sectors. However, the final outcome of these decisions still remains to be seen.<sup>6</sup>

On the other side of the Pacific Ocean, Ministers in charge of trade from thirty-four countries in the Americas met in Denver on July 1, reconfirming their commitment to establish a free trade area of the Americas (FTAA) by 2005. The outcome of this meeting also remains to be seen.<sup>7</sup>

Asian and European countries agreed to a summit meeting in Bangkok in March 1996.<sup>8</sup> The Singaporean Prime Minister first proposed this meeting in October 1994 to encourage dialogue on Europe's accusation of social dumping.<sup>9</sup> The hidden agenda for this meeting is probably to develop cooperation among APEC's East Asian members and to exclude North America, Australia, and New Zealand.

The ASEAN Regional Forum (ARF), a forum for security issues at the regional level, held its second meeting at Brunei on August 1 to discuss issues such as the Spratly Islands.<sup>10</sup> Several countries established ARF in 1994, including ASEAN, the United States, Canada, the European Union (EU), Japan, South Korea, Australia, New Zealand, Papua New Guinea, China, Russia, Laos, and Vietnam. ARF's structure is different from most regional security forums in the Asia Pacific area. For instance, ARF, as in the Helsinki process, includes the major powers. Therefore, the group is different from a traditional alliance or security arrangement, which presupposes a confrontation or containment strategy against potential enemies. ARF is not a rigid security framework, but rather a discussion forum and a consultative scheme, without any dispute settlement mechanism.

## II. APEC: Trends and Perspectives<sup>11</sup>

### A. BASIC TRENDS IN THE APEC PROCESS<sup>12</sup>

Australia first proposed APEC in 1988, and the organization has encouraged cooperation in the Asia-Pacific region since its establishment in November 1989. APEC formed as the result of many factors. First, the increasing economic interdependence among countries in the region encouraged dialogue and cooperation.

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5. *Id.*

6. *Id.*

7. *Id.* July 1, 1995, at 2.

8. *Id.* May 5, 1995, at 5.

9. *Id.*

10. *Id.* July 31, 1995, at 6.

11. LAWRENCE T. WOODS, ASIA-PACIFIC DIPLOMACY, NON-GOVERNMENTAL ORGANISATIONS AND INTERNATIONAL RELATIONS, *Chapter 6 The Pacific Economic Cooperation Council*; NORMAN D. PALMER, THE NEW REGIONALISM IN ASIA AND THE PACIFIC, 1991, *Chapter 2 Asia-Pacific Regionalism: An Overview*.

12. LAWRENCE T. WOODS, *supra* note 11.

The trade among countries in the region was vertical, consisting of both industrialized countries and natural resource suppliers. Industrialized countries such as the United States and Japan were centers of vertically linked trade networks. This structure was significantly different from those used in less diversified regions such as the European Community (EC). Each country must participate equally to establish a certain level of reciprocal or mutual interdependence. Otherwise, the arrangements will differ, as in the Lomé Convention's development-oriented or assistant-oriented arrangements. The current members of APEC still trade under this vertical structure due to the diversity of their development. However, they are beginning to establish a comprehensive arrangement similar to that of the EC. Also, successful economic development has encouraged some small countries to participate in a regional framework, thus avoiding domination by the major economic and political powers in the region. In fact, some developing countries are the most provocative members in the discussion on the future of APEC. The reallocation of economic power within the region is, along with its overall economic dynamism, a main motivating factor for a regional arrangement.

The diminishing Cold War element in the region also provided momentum for APEC's progress. The end of the Cold War is much less apparent in Asia than in Europe. In Asia, ideological confrontations still remain. However, the collapse of the former Soviet Union has, without doubt, changed the strategic environment of the region; and, more importantly, the introduction of economic pragmatism by some socialist countries, such as Mainland China and Vietnam, is creating a background for practical economic cooperation among ideologically different but economically integrating countries.

Although APEC originally dealt with economic matters, members today are increasingly involved in policy matters. This emphasis on policy includes APEC's denunciation of other regional arrangements that could undermine the General Agreement on Tariffs and Trade (GATT)-World Trade Organization (WTO) multilateral liberal trade regime. Moreover, APEC is becoming a symbol of cooperation in the whole region, including East Asia, Southeast Asia, and North America. Without this policy of cooperation, mutually exclusive agreements, such as the North American Free Trade Agreement (NAFTA), will probably develop. Therefore, APEC always symbolizes the link between these geographically and culturally divisible regions. Against this diverse background, APEC is a unique group of regional arrangements.

Although a regional arrangement, reflecting the economic, cultural, and political diversity among its members, APEC is also a universal arrangement. Therefore, future plans for APEC require the same considerations as those for universal international organizations, such as the WTO. First, APEC may base its internal cooperation on economic pragmatism rather than cultural and psychological ties among members. Second, APEC should remain open to outsiders. Third, APEC could become a flexible and expansive arrangement, maintaining its current forum-like looseness. This element could change, however, depending upon the

development of the institution. Fourth, APEC should continue to be a complex of subregional, multidimensional elements, comparable to that of NAFTA, the Australia-New Zealand Free Trade Arrangement, an expected AFTA by ASEAN members, and small economic free zones.

APEC members set out their present direction in their third ministerial meeting at Seoul in 1991 by adopting the Seoul APEC Declaration. This declaration included the following goals: (1) regional growth and the achievement of common interests for the region's inhabitants, (2) the strengthening of a multilateral free trade framework in a global sense, and (3) the internal liberalization of trade and investment compatible with the GATT principles.<sup>13</sup> Based upon these principles, the declaration stipulated two methods of cooperation: (1) respect of mutual interests, by considering different stages of economic development and different social and political systems, and (2) open dialogue and consensus by respecting all members' views.<sup>14</sup> Therefore, APEC clearly recognizes divergence among members, including their different stages of economic development and different social and political systems.

APEC also intends to use the free trade principal to maintain the nations' economic development. The free trade principle has two aspects, the promotion of internal liberalization of trade and investment and the maintenance of free trade with outside economies. APEC can achieve this second aspect by maintaining its compatibility with GATT-WTO principles. Specifically, APEC can expand its liberalization process using the most-favored-nation principle (MFN). However, just how APEC will achieve GATT-WTO compatibility in the process of further development remains unclear. Regional arrangements almost always have a negative effect on the GATT-WTO framework. At present, various movements toward regional integration have progressed, creating a protectionist effect against outside economies.

Also unclear is the issue of how some APEC members' style of economic development can be integrated in the GATT-WTO framework. The postwar period has seen constant discussion on how underdeveloped countries can achieve economic development, and these discussions have greatly affected the GATT-WTO regime. Another issue is how regional arrangements such as APEC can cope with rapidly growing economies. If East Asian countries have different patterns or styles of economic development, and if such patterns are useful for others, incorporating these patterns into the legal framework of regional arrangement, and finally into the WTO regime, may prove useful. This attempt could be an alternative to the largely unsuccessful development initiatives in the post-war period.

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13. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), 1991 Seoul, Joint Statement, Seoul APEC Declaration.

14. *Id.*

## B. APEC'S PROGRESS BEFORE 1995

### 1. *The First Canberra Ministerial Meeting (1989)*<sup>15</sup>

APEC members held the inaugural ministerial meeting at Canberra in 1989. These members included the United States, Canada, Japan, Korea, Australia, New Zealand, and ASEAN. The main achievement of the meeting is its very holding. The Joint Statement after the meeting was full of rather negative points, which the APEC process should avoid. These points included the avoidance of forming a trade bloc in the region by ensuring consistency with the GATT rules. The members also avoided a decision on any particular structure, since this decision was premature at that stage. APEC was a modest consultative forum for the exchange of views and research, not a rigid institution.

APEC maintained and extended its commitments to open multilateral trading, regional diversity, including differing social and economic systems and current levels of development, and, finally, work programs. APEC's statement mentioned programs on (1) economic studies, (2) trade liberalization, (3) investment, technology, and human resources, (4) reviews of data on regional trade flow and development, and (5) trade, investment, and technical transfer opportunities.<sup>16</sup> The statement also expressed APEC's desire to involve the People's Republic of China, Taiwan, and Hong Kong in its membership.

### 2. *The Second Ministerial Meeting at Singapore (1990)*<sup>17</sup>

The second meeting at Singapore clarified APEC's goals. The Joint Statement set trade liberalization and regional cooperation as APEC's main objectives. The Statement clearly said that regional liberalization was desirable, "so long as any such liberalization was consistent with GATT principles and was not to the detriment of other parties."<sup>18</sup> Thus, the Statement prohibited protectionism and therefore observance of the MFN principle under GATT.

During this meeting, APEC ministers also prepared the Declaration on the Uruguay Round.<sup>19</sup> The Declaration of the Uruguay Round was probably APEC's first outward policy declaration, and demonstrated its shared interest. Ministers also agreed on the framework of work projects, which included (1) review of trade and investment data, (2) trade promotion and programs, (3) investment and technical transfer in the region, (4) multilateral human resource development, (5) regional energy cooperation, (6) marine resource conservation and prevention of marine pollution, and (7) telecommunications.<sup>20</sup>

15. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), APEC Ministerial Meetings, 1989 Canberra, Joint Statement, Specific Elements of a Work Program.

16. *Id.*

17. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), APEC Ministerial Meetings, 1990 Singapore, Joint Statement, Declaration on the Uruguay Round.

18. *Id.*

19. *Id.*

20. *Id.*

### 3. *The Third Ministerial Meeting at Seoul (1991)*<sup>21</sup>

The meeting at Seoul was significant for its development of APEC's subsequent activities and structure.<sup>22</sup> Ministers clarified APEC's objectives and procedures by their Joint Statement and APEC Declaration. In the Joint Statement, "Ministers endowed APEC with a clear international personality."<sup>23</sup> The meaning of "international personality" in a legal sense is not totally clear, but at least APEC may have become an independent entity at the international level.<sup>24</sup> The Statement also reconfirmed APEC's commitment to the GATT rules, saying that members would pursue "trade liberalization within APEC on a GATT-consistent basis and not to the detriment of others." The Statement also set out and authorized the complete list of work programs, consisting of ten schemes, including the above-mentioned seven tasks and adding three additional tasks: fisheries, transportation, and tourism. APEC members also considered "the possibility of establishing a mechanism of a permanent basis to provide support and coordination for APEC activities at various levels."<sup>25</sup> This statement led to the establishment of APEC's secretariat in the following year. The APEC Seoul Declaration may be the most significant document in the process so far. The Seoul Declaration clearly stipulated the objectives of APEC, consisting of (a) economic development, (b) economic liberalization, (c) multilateral trading, and (d) trade and services, "in a manner consistent with GATT principles, where applicable, and without detriment to other economies."<sup>26</sup> The Declaration also stipulated (a) the principle of mutual benefit, taking into account the diversity in the region, and (b) open dialogue and consensus building among members.<sup>27</sup> The Declaration also set out guidelines for participation, including: (a) new participants should have strong economic links in the region, (b) they should accept the objectives and principles of APEC, and (c) all participants will be involved in decision making.<sup>28</sup> The Seoul Declaration also called for (a) an annual ministerial meeting to determine the direction, nature, and implementation of APEC's activities, (b) a senior officials' meeting to develop the APEC process in accordance with the decisions of the ministerial meetings, and (c) a work program, organized by a working group.<sup>29</sup>

In the Seoul meeting, the three Chinas (the People's Republic of China, Taiwan, and Hong Kong) participated for the first time. Ministers again made the Declaration on the Uruguay Round.

21. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), 1991 Seoul, Joint Statement, Seoul APEC Declaration, Declaration on the Uruguay Round.

22. 2(1).

23. *Id.*

24. *Chapter Eleven, Legal Status*, SCHERMERS, *INTERNATIONAL INSTITUTIONAL LAW*, 770 (1980).

25. See *supra* note 21.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

#### 4. *The Fourth Ministerial Meeting at Bangkok (1992)*<sup>30</sup>

The fourth meeting basically followed the previous meeting, adding some important institutional developments. The meeting established the secretariat in Singapore, though its scale is small. In the Bangkok Declaration on APEC Institutional Arrangements, Ministers gave the secretariat "such legal capacity as is necessary for the exercise of its functions."<sup>31</sup> This legal capacity may mean the legal function in Singaporean domestic law, rather than in international law. The parties also agreed that APEC needed a budget to cover administrative and operation costs.<sup>32</sup> This budget is also modest, reflecting some members' opposition to any strong institutional arrangement. Ministers also agreed to establish a small eminent persons' group as an advisory body, consisting of academics. In the Joint Statement, Ministers particularly mentioned subregional arrangements, such as NAFTA and AFTA, and said that "APEC should encourage investment linkages, regional and subregional trade arrangements to be outward-looking and GATT-consistent."<sup>33</sup> This statement probably stems from concerns about the development of subregional arrangements during the year.

On the membership issue, "APEC was entering a phase when consolidation and effectiveness should be the primary considerations, and the decisions on further participation required careful consideration in regard to the mutual benefits to both APEC and prospective participants."<sup>34</sup> Thus, as is common in regional arrangements, APEC began to balance expansion of participants, on the one hand, against effectiveness of operation, on the other. As a result, APEC became less enthusiastic about increasing its membership to enhance its effectiveness. Members again issued the Declaration on the Uruguay Round in the meeting.<sup>35</sup>

#### 5. *The Fifth Ministerial Meeting and the First Leaders' Meeting at Seattle (1993)*<sup>36</sup>

The meetings at Seattle reconfirmed APEC's objectives, particularly the commitment to regional trade liberalization. Therefore, the Seattle meetings

30. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), APEC Ministerial Meetings, 1992 Bangkok, Joint Statement, Statement on the Uruguay Round, Bangkok Declaration on APEC Institutional Arrangements.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), Leaders Meetings, 1993 Seattle, Leaders Economic Vision Statement, Leaders Initiatives, APEC Ministerial Meetings, 1993 Seattle, Joint Statement, Declaration on APEC Ministers on the Uruguay Round, Declaration on an APEC Trade and Investment Framework, Ministerial Statement on Telecommunications, Ministerial Statement on Tourism, Ministerial Statement on Marine Resource Conservation, Economic Trends and Issues Mission Statement.

probably did not create a new era for APEC. An informal leaders' meeting also reconfirmed the APEC objectives, though leaders, in their statement, envisioned "a community of Asia Pacific economies."<sup>37</sup> Leading did make some important arrangements. First, the leaders agreed to hold the Finance Ministers' meeting at a later date. This delay was a departure from the previous attitude toward financial matters; but national financial authorities, particularly in the United States and Japan, were reluctant about the APEC process. These authorities claimed that economic policy coordination should use existing models such as the G7 process. Financial authorities still opposed economic policy coordination via the APEC process, thus excluding this area from the Economic Trends and Issues group.

Second, members established the Pacific Business Forum (PBF) as an advisory forum, "comprised of two private sector representatives, including one representing small and medium business, from each member."<sup>38</sup> The PBF submitted their report at subsequent meetings, mainly based upon overall business concerns. Third, members decided to develop a nonbinding code of principles covering investment issues, which they promulgated the following year.<sup>39</sup>

Ministers also reconfirmed APEC's basic principles. Both the Joint Statement and the Declaration on an APEC Trade and Investment framework called for GATT consistency, consensus-building, flexibility, and diversity.<sup>40</sup> Ministers made some institutional changes. First, the Committee on Trade and Investment (CTI) replaced the previous informal group on regional trade liberalization (RTL) to fully pursue the reduction of "barriers to trade in goods and services and investment among participants in a manner consistent with GATT principles and without detriment to other economies."<sup>41</sup> Second, members established the group on economic trends and issues (ETI) "to propose a direction that will engage a productive dialogue that will examine possible area of economic cooperation without extending into the realm of economic policy coordination."<sup>42</sup>

On the membership issue, Ministers agreed to defer consideration of additional members for three years. In the Seattle meeting, Ministers admitted Mexico and Papua New Guinea, and Chile joined the following year. Members also issued the Declaration on the Uruguay Round, which put pressure on the EC and led to the conclusion of the Round in the same year.

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37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*



6. *The Sixth Ministerial Meeting at Jakarta and the Second Leaders' Meeting at Bogor (1994)*<sup>43</sup>

The 1994 meetings showed some important progress in cooperation, though the members maintained their original goals of GATT-consistency and intraregional diversity. In the APEC Leaders' Declaration of Common Resolve, leaders agreed to the goals of regional liberalization and established specific deadlines.<sup>44</sup> APEC members should achieve free and open trade and investment by the year 2020. The deadline for industrialized economies is 2010 and the deadline for developing economies is 2020. This commitment was a political declaration rather than a binding legal agreement.<sup>45</sup> Specific details of this liberalization program are not clearly established; therefore its legal impact remains uncertain.

If the program's final goal is to create a free trade arrangement, the deadlines of 2010 or 2020 might prove problematic. The WTO rule of regional arrangement stipulates a transition period of ten years as its goal. APEC should prove the necessity for its longer period of transition. If APEC's goal is merely as partial liberalization, APEC should extend liberalization to nonmembers on a MFN basis, as under the WTO rule. Leaders stated that their goal is "the actual reduction of barriers among APEC economies but also between APEC economies and non-APEC economies," but added to that non-APEC developing countries would "benefit from the trade and investment liberalization in conformity with GATT-WTO provisions."<sup>46</sup> The latter sentence is unclear, but the rule is that any partial liberalization at a regional level shall extend to all outsiders, no matter whether they are developed or developing countries. APEC should clarify this statement. The declaration also gave special treatment to developing members by saying that, with regard to the initiation and implementation of a cooperative arrangement, "those that are not yet ready to participate may join at a later date."<sup>47</sup> The declaration did not clarify which members deserve such special treatment. Leaders also agreed to examine the possibility of a voluntary consultative dispute mediation service to supplement the WTO dispute settlement mechanism, though its details are not final.

Another achievement in the meetings was the adoption of the APEC Nonbinding Investment Principles, which outline principles for regional investment based upon liberalization and fairness. This document stipulates that non-APEC investors should be treated equally with APEC investors and with indigenous investors

43. APEC Secretariat, *Selected APEC Documents 1989-1994* (1995), Leaders Meetings, 1994 Bogor, Leaders Declaration of Common Resolve, APEC Ministerial Meetings, 1994 Jakarta, Joint Statement, Nonbinding Investment Principles, Declaration: A Human Resources Development Framework.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

under the principles of nondiscrimination and national treatment. Further specification and implementation of these principles remains to be seen.<sup>48</sup>

The Minister's Joint Statement initiated several institutional changes. First, the Ad Hoc Group on Economic Trends and Issues, established primarily for economic review and analysis, became the Economic Committee.<sup>49</sup> Each group seems to progress from a working group to an ad hoc group, and finally to a committee, as in this case. Second, members established the Budget and Administrative Committee (BAC), which is in charge of budgetary issues and operational and administrative efficiency commensurate with the institutional development of APEC.<sup>50</sup> Third, Ministers established two subcommittees, the Subcommittee on Standards and Conformance and the Subcommittee on Customs Procedures, both of which will be under the Committee on Trade and Investment.<sup>51</sup>

### C. THE PROGRESS IN 1995<sup>52</sup>

In 1995, APEC held the seventh ministerial meeting and the third leaders' meeting in Osaka, Japan. These Meetings generally reconfirmed existing APEC principles, while also showing the start of the liberalization program under the Bogor Declaration. Members reconfirmed the principle of voluntary liberalization. Members also reiterated that APEC remains consistent with the WTO agreements and retains flexibility in actual implementation. Leaders also agreed on the need for an APEC dispute mediation service, though details are still unclear.

Leaders set January 1997 as the start of the overall implementation of the action plans for liberalization and facilitation. To achieve this goal, they set out a general framework for implementation in the Action Agenda, and demonstrated their commitment to this Agenda by offering preparatory liberalization and facilitation in the Initial Actions. The Action Agenda is also a reconfirmation of existing principles, such as WTO consistency, nondiscrimination, and flexibility. The Agenda reconfirmed that "the outcome of trade and investment liberalization in the region will be the actual reduction of barriers not only among APEC economies but also between APEC economies and non-APEC economies."<sup>53</sup> The Agenda also stipulated that "considering the different levels of economic development among the APEC economies and the diverse circumstances in each economy, flexibility will be available in dealing with issues arising from such circumstances in the liberalization and facilitation process (facilitation includes supplementary measures for liberalization, such as harmonization, standardization and the creation of a dispute settlement mechanism)."<sup>54</sup> The Action Agenda set out the

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48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. See *supra* note 1.

53. *Id.*

54. *Id.*

possible liberalization and facilitation in each sector, with additional attention to subregional arrangements, by saying, for instance, that members considered "extending on a voluntary basis, to all APEC economies the benefits of reductions and eliminations of tariff and nontariff measures, derived from subregional arrangements."<sup>55</sup>

With regard to trade in services, a general harmonization or mutual recognition of standards and procedures is evident in sectors such as telecommunications, transportation, energy, and customs. The need for harmonization in the areas of competition policy, intellectual property rights, and the rule of origin is also obvious. Members created agreements for the settlement of disputes between governments and private entities.<sup>56</sup> The business sector may have requested these agreements, as shown in the Pacific Business Forum report.<sup>57</sup>

The Joint Statement also reconfirmed principles such as voluntaries and WTO consistency. The statement also reiterated that cooperation is the main pillar of APEC activities, along with liberalization programs, by specifically saying that "Ministers stressed the need to further promote economic and technical cooperation in order to achieve sustainable growth and equitable development in the Asia Pacific region."<sup>58</sup>

On the institutional side, Ministers generally agreed to strengthen the secretariat, but delegated its specific planning to the Senior Officials' meetings.<sup>59</sup> With regard to the participation issue, leaders also instructed the Senior Officers to continue to consider APEC's policy on new membership and observer status.<sup>60</sup>

Finally, members established another new organization, the APEC Business Advisory Council (ABAC) as requested by the Pacific Business Forum.<sup>61</sup> This Council may strengthen the influence of business concerns in a formal way within the APEC process, but, on the other hand, may hinder neutral, independent, and perhaps efficient business involvement.

#### D. LONGER-TERM PERSPECTIVES OF APEC'S PRINCIPAL ISSUES

##### 1. *The Scope of APEC*

###### a. The Membership

As have other regional arrangements, APEC needs to balance the effectiveness of its arrangements, on the one hand, and the increase of new participants, on the other, with the progress of its detailed cooperation programs. The Seoul

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55. *Id.*

56. *Id.*

57. PACIFIC BUSINESS FORUM, THE OSAKA ACTION PLAN: ROADMAP TO REALISING THE APEC VISION (1995).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

APEC Declaration in 1991 set out the general criteria for new members. However, the Declaration also indicated that new participants would eventually be decided by consensus among existing members. In general, effective cooperation requires a certain level of equal economic performance; and a minimum development level, along with economic interdependence, may be necessary before members are admitted. This aspect is particularly important for APEC, whose diverse membership may prove problematic in effective arrangements. However, political considerations such as regional stability and conflict prevention suggest a policy of broad inclusion, just as the ASEAN Regional Forum uses the principle of comprehensive membership in the security area.

Another issue for APEC is whether to expand subregional arrangements. The formation of NAFTA probably encouraged APEC to admit Mexico and perhaps Chile as well. With the development of NAFTA and a wider free trade area of the Americas initiative, the issue for APEC is whether new members of such American arrangements should be automatically, or at least favorably, admitted to APEC. The same issue is apparent in ASEAN with the participation of Vietnam and the possible admission of other Indo-Chinese countries. If APEC is a comprehensive arrangement, as was the former LAFTA or LAIA in Latin America, a certain level of parallel expansion between APEC and its subregional arrangements might be understandable. However, if APEC is endowed with its own programs, an automatic inclusion of subregional arrangements may not be reasonable. This issue needs further consideration.

#### b. The Scope of Activities

Another debatable issue is which functional areas APEC should cover. Since its inception, APEC has strictly limited its involvement in economic areas. Most international cooperation schemes concentrate on the economic field, excluding matters of politics and security. Economic cooperation is more straightforward than political cooperation, which may touch the national sensitivities of each participant or spark existing or potential political conflicts in a region. Economic cooperation is also politically neutral and technically necessary, as demonstrated in the development of international administrative cooperation in the Universal Postal Union and the International Telecommunication Union. The EC is also a notable example of how successful cooperation in the economic field has encouraged regional cooperation.

In the case of APEC, however, rigid, bilaterally based security networks already existed in the region, excluding the necessity for another new scheme. The inclusion of political issues would have also discouraged the participation of the three Chinas, which have particular political sensitiveness among themselves. But the clear distinction between economic and noneconomic fields is increasingly difficult. Economic matters themselves have, more or less, a political aspect; and, to achieve a stable regional arrangement, political aspects must be covered. The EC has also gradually extended its scope, first informally, and

later more formally, into a more political area. This creeping expansion might take place in APEC, too. Currently, leaders' meetings strictly limit the discussion to the economic field, but leaders may have to broaden the scope into noneconomic areas. APEC meetings already include bilateral leaders' consultations and ministerial meetings, which draw no less attention than the formal APEC plenary meetings. As early as 1992, in the keynote speech of the Bangkok ministerial meeting, the Thai Prime Minister emphasized that "APEC, as a uniquely diverse and open consultative forum, holds vast untapped potential for cooperation in a broad range of areas, economic and otherwise," implying a wider political arena.<sup>62</sup> APEC's own informality may encourage its expansion into economic areas.

## 2. *The Structure of APEC*

APEC members agree that APEC should not seek a rigid institutional structure, but should instead maintain flexibility and voluntariness. APEC uses a simple structure, consisting mainly of ministerial meetings, a senior officials' meeting, and a limited number of committees and working groups. The secretarial and budgetary arrangements are quite limited to avoid a large bureaucracy. However, with the development of APEC programs, the current loose structure might become obsolete. Indeed, APEC has shown a steady institutional development, such as the establishment of permanent committees, the establishment and possible expansion of the secretarial and budgetary arrangements, and the creation of an annual informal leaders' meeting. The issue of institutional expansion should be examined in the context of the progress of APEC programs, including trade liberalization and various facilitation measures.

However, the effectiveness of institutions is not easy to evaluate. Since its inception, and the previous long-continued debate on a possible regional arrangement, APEC's flexible, rather informal structure has been suitable for Asia-Pacific cooperation. Leaders chose this flexible structure to promote efficient management. APEC members preferred a flexible organization comparable to that of the OECD over the rigid framework used by the EC.<sup>63</sup> The OECD has been relatively successful in coordinating members' policies, even without rigid, binding legal instruments. Rather, peer pressure and mutual verification are frequently the reasons for this efficiency. However, this mechanism works only because the OECD is comprised entirely of countries with advanced economies and therefore equal-footing and like-mindedness of members. This condition is normally difficult to achieve, since APEC, in particular, is far from a group of members of equal-footing. Therefore, to provide a reliable business environment with predictability and stability, a relatively rigid mechanism may be necessary to promote efficiency.

62. See *supra* note 30.

63. See *supra* note 11.

### 3. *The Process of the APEC Arrangements*

#### a. Trade and Investment Liberalization

One of APEC's objectives has been liberalization at the regional level. At the same time, consistency with the GATT-WTO rule has always been a main principle, along with flexibility. So far, APEC has not started the regional liberalization program, but the issue to come is the balance between regional liberalization and WTO-consistency. APEC has two choices: creation of a free trade area, incompatible with the current WTO rule, or nondiscriminatory extension to non-APEC countries, under the MFN principle. The 1994 Bogor Declaration set a goal of regional liberalization by 2020. Whether the Declaration meant a free trade arrangement or partial liberalization with the MFN extension to nonmembers remains unclear. Realistically speaking, complete intraregional liberalization will be difficult to achieve, considering the diversity of economic stages among members. Also, APEC members will not automatically extend all intra-regional liberalization to domestically sensitive nonmembers. The deadline of 2020 is already far beyond the WTO's ten-year limit. APEC may use the principle of voluntary liberalization as an excuse for the delay, claiming that any liberalization is made on an individual basis and therefore has nothing to do with APEC itself. Thus, each member decides whether regional liberalization should be extended to nonmembers. If members act against the WTO rule, they have only themselves to blame, not APEC. This approach may be difficult to sustain; and, sooner or later, APEC will have to explain the legal ground for the delay in liberalization programs.

Another unresolved issue is the treatment of subregional arrangements that overlap APEC such as NAFTA, AFTA, and the free trade area of the Americas. WTO rules do not distinguish between a relatively comprehensive regional arrangement and a subregional arrangement. Therefore, any subregional arrangements that overlap still satisfy the conditions stipulated in the General Agreement. On the other hand, the relation between an umbrella arrangement such as APEC and subarrangements such as NAFTA and AFTA might be difficult to coordinate because their levels of liberalization differ. For instance, NAFTA has achieved a more advanced level of liberalization than APEC, while AFTA has achieved a lesser level of liberalization than APEC. This dichotomy might, in combination with a rigid rule of origins, cause discriminatory treatment among members in an umbrella arrangement, thus undermining the very goals of such an arrangement. The increase of free trade arrangements, whether subregional or overlapping, could lead to free trade at the global level; however, the increase could just as well lead to further discrimination around the world.<sup>64</sup>

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64. C. Fred Bergsten, *APEC and World Trade: A Force for Worldwide Liberalisation*, FOREIGN AFFAIRS 20 (May/June 1994).

With regard to subregional arrangements in the Asia-Pacific region, another, more political issue is the possible creation of an exclusive East Asian arrangement as a unit in APEC. The Malaysian initiative of an East Asian Economic Caucus (EAEC, originally named an East Asian Economic Group) remains controversial.<sup>65</sup> This initiative is meant to counter NAFTA, which may have a protectionist effect on other APEC members. The specific scheme of an EAEC is not clear. However, the EAEC seems to be a forum for discussion among geographically close economies in East Asia. The initiative in and of itself places strong pressure on the APEC process, thus leading to an increasingly strong commitment to regional liberalization.

#### b. Harmonization

An increase in trade invariably raises the issue of tariff and nontariff measures. In APEC, too, nontariff measures in major industrial sectors have been on the agenda. The solution to nontariff measures may be their abolition or at least their reduction. However, if measures are necessary for policy reasons, a possible solution may be the prescription of nontariff standards at an international level. This standardization is possible among countries with similar economies, but APEC's diverse membership may have difficulty setting up acceptable standards. Therefore, current APEC programs favor an approach of mutual recognition of other members' standards and policies. The Action Agenda for trade liberalization and facilitation, adopted in the Osaka meeting in 1995, reflects this goal.

However, the diverse APEC members will not easily accept mutual recognition. Different administrative measures contain different policy considerations. Different economic structures and developmental stages necessitate different economic regulations. Some advanced members' standards may be too harsh for developing members, and some standards in developing members may be unacceptably loose for advanced members. Developing members may need stricter standards. APEC is considering the creation of common testing and training for those in charge of regulative measures. Immediate harmony and mutual recognition principles are not really feasible under the current APEC programs.

#### c. Dispute Settlement

APEC is considering the creation of a regional dispute settlement mechanism to supplement the WTO dispute settlement mechanism. The statement in Jakarta, for instance, suggested that APEC's regional settlement mechanism should be

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65. Low, *The East Asian Economic Grouping*, No. 4 THE PACIFIC REVIEW 4 (1991); Nigel Holloway & Thorny Rowley, *East Asian Trade Grouping at Top of Region's Agenda, An Insurance Policy*, FAR EASTERN ECON. REV. 52 (July 25, 1991); *Malaysians Question APEC Goal*, FINANCIAL TIMES (London), November 9, 1994, at 17.

a mediatory body rather than a WTO legal settlement body. These ideas may stem from members' concerns about recent economic disputes between the U.S. and Asian economies, and members expect more efficient settlement by a regional body. However, before APEC establishes a regional settlement mechanism APEC must prove why this mechanism is more useful when operating separately from the WTO process. APEC must consider the special character of disputes in the Asia-Pacific region and whether members will observe regional solutions. In establishing a nonlegalistic settlement mechanism such as a mediation system or a more politically based settlement body, APEC must prove why such a non-WTO mechanism will be suitable for Asia-Pacific conditions. Extra-legal dispute settlement may be more efficient for Asian economies; however, an Asian-style dispute settlement mechanism will probably not be effective in disputes among members with different economic characteristics. The business sector may favor a relatively legalistic approach to promote predictability or certainty in business activities.

#### E. THE FUTURE PROSPECTS FOR THE APEC PROCESS

APEC's future is still subject to debate, especially the issue of whether APEC should maintain its flexible and open structure or introduce a more rigid and closed style. APEC will most likely preserve its basic principles such as the minimal institutional arrangement, the voluntary approach to liberalization, the nondiscriminatory treatment, the consistency with the WTO, and the flexibility based on economic diversity. However, at the same time, members will increasingly introduce opposing principles. This phenomenon is already evident in, for instance, the gradual progression toward a more rigid form, such as the regularization of informal leaders' meetings (in a way, formalization of informal meetings), the increase in committees, and the incremental expansion of the secretariat and the budgetary arrangements. The restrictive attitude toward admission of new members, based on the concern for APEC's effectiveness, may be a symptom of expected closeness. On the other hand, APEC may, as have other institutions, expand its scope of activities. Leaders' are already using APEC's informal structure to turn meetings into more comprehensive discussions, covering both economic and noneconomic matters. A newly established dispute settlement mechanism might increase its jurisdiction on noneconomic matters, under the guise of vague APEC directives. The members themselves are certainly demanding a forum with broad coverage in the region, including coverage of social matters, security aspects, and human rights issues, though APEC presently avoids these areas. However, APEC will enhance the cooperative mood in the region, particularly through its frequent consultations and cooperative activities. Institutionally, too, APEC's action-oriented programs will increase the need for a more reliable institutional arrangement, and this increase will be largely achieved through a similar creeping expansion of APEC institutions. Therefore, APEC will become another example of an evolving group of regional arrangements.



### III. The Association of Southeast Asia Nations: Trends and Perspectives<sup>66</sup>

#### A. ASEAN'S EARLY HISTORY<sup>67</sup>

Five foreign ministers from Thailand, Malaysia, Singapore, the Philippines, and Indonesia established ASEAN in 1967 by signing the Bangkok Declaration. The main objectives set out in the declaration were, first, "to accelerate the economic growth, social progress and cultural development," and, second, "to promote active collaboration and mutual assistance on matters of common interest in the economic, social, cultural, technical, scientific and administrative fields."<sup>68</sup> Therefore, ASEAN's aim has been economic cooperation and development, as well as cooperation in other fields. The creation of ASEAN was not necessarily logical, considering the diversity of the five original countries. Due to their former colonial ties, each of the five was separately linked to or depended upon an external power. A clear identity as ASEAN, or Southeast Asia, probably did not exist at the beginning. ASEAN was, as other organizations of that era, a creation of the Cold War, supported by the United States to promote political and economic ties at the regional level. Consequently, ASEAN's early era was not markedly successful in terms of cooperation.

ASEAN members attempted to remedy this early stagnation in the wake of the end of the Vietnam War in 1975. How the war's end influenced cooperation among ASEAN members is not totally clear, but cooperation probably stemmed from fear of the communist camp and domestic instability. Thus, they held the first heads of government's meeting at Bali in 1976, where they signed the Declaration of ASEAN Concord and the Treaty of Amity and Cooperation in Southeast Asia. Members also established a secretariat in Jakarta. In the following year, they signed the ASEAN preferential trading arrangements for trade liberalization. However, their first real achievement was their political cooperation during the unstable period after the Vietnam War. In the wake of the Vietnamese invasion of Cambodia in 1978, ASEAN members successfully formed a common position against the Vietnamese-backed government in Cambodia and elsewhere, including the UN. Their strong pressure finally led to the withdrawal of Vietnam, and subsequently encouraged the resolution of the Cambodian conflict. ASEAN's success as a political group probably created the image of a relatively well-

66. WOLFGANG MOELLERS & ROHANA MAHMOOD, eds., *ASEAN, FUTURE ECONOMIC AND POLITICAL COOPERATION, PROCEEDINGS OF THE CONFERENCE ON ASEAN FUTURE ECONOMIC AND POLITICAL COOPERATION*, Kuala Lumpur, November 13-15, 1992, Institute of Strategic and International Studies (Malaysia, 1993); ALISON BROINOWSKI, *ASEAN INTO THE 1990s* (1990); Oordin Sopiee, Chew Lay See, & Lim Siang Kim, eds., *ASEAN at the Crossroads: Obstacles, Options, and Opportunities in Economic Cooperation*, East Asia Analytical Unit, Department of Foreign Affairs and Trade, Malaysia (1994); Association of Southeast Asia Nations (ASEAN), in *HANDBOOK OF INTERNATIONAL ORGANISATIONS, 1993-1994*, Vol. 1, ORGANISATION DESCRIPTIONS AND CROSS-REFERENCES, 30th ed.

67. *Id.*

68. *Id.*

organized body. Internally, their policy towards the Cambodian issue and other common regional problems, such as the Indochina refugees, may have encouraged a sense of cooperation among the members. This progress is an example of political cooperation encouraging policy integration in the economic area.

#### B. ASEAN's POLITICAL COOPERATION<sup>69</sup>

ASEAN's cooperation on the political side is seen in their internal consultation at the head-of-the-government level or ministerial meetings, where they discuss common issues and try to reach an accord. Members have cooperated well so far, dealing cautiously with the issues presented. Such issues have included, in the early period, the Indochina conflict and the consequent refugee problem, and recently the effect of external powers such as China upon the Spratly Islands territorial disputes. During this process, ASEAN has become a political group, though their real solidarity is doubtful, considering their diversity.

ASEAN's political significance has another element. This element is the organization's role as a key unit in a wider regional context. ASEAN's relatively high institutionalization and strategic importance now provide a means for Asia-Pacific political consultation, though these consultations are still at an embryonic stage. From 1984 on, ASEAN foreign ministers collectively consulted with outside foreign ministers on various issues, both economic and political, after that ASEAN foreign ministers' meetings. This consultation is the so-called ASEAN Post-Ministerial Conference, and the dialogue partners are Australia, Canada, the EC, Japan, Korea, New Zealand, and the United States. In 1993, APEC leaders enlarged these discussions by establishing the ASEAN Regional Forum (ARF), a forum held at the Post-Ministerial Conference to discuss regional security issues. Therefore, ASEAN is developing regional political cooperation.

Another reason for ASEAN's recent success is ASEAN's political activity, motivated by the economic performance of each member-country. In 1995, the ARF meeting showed steady progress of this process.<sup>70</sup> At this meeting, members decided that political activity would enhance ASEAN's confidence building, preventive diplomacy, and dispute settlement. Participants agreed on the establishment of two subgroups, a confidence building group and a peacekeeping group. The parties also discussed some sensitive regional issues such as the Spratly Island dispute.

#### C. ASEAN's ECONOMIC COOPERATION<sup>71</sup>

Generally speaking, ASEAN has been politically successful and economically inactive.<sup>72</sup> ASEAN's difficulties are common to other economic cooperative

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69. *Id.*

70. See *supra* note 10.

71. See *supra* note 66.

72. *Id.*

schemes in the Asia-Pacific region. ASEAN's first obstacle is the diversity in its members' developmental stages and economic structures, which hinders economic and political cooperation. The lineup of ASEAN members is as diverse as the states in the Asia-Pacific region. The group includes highly developed and particularly small countries such as Singapore, newly industrialized countries such as Malaysia and Thailand, underdeveloped economies such as Indonesia, small Opec-type resource-dominated states such as Brunei, and recently, Socialist countries such as Vietnam. This variety will increase with the participation of other Indo-Chinese countries, which have agricultural, less industrialized, economies.

ASEAN's second obstacle to regional cooperation is its traditional link with external economic powers, even though ASEAN's outward-looking stance contributes to its economic success. Recently, ASEAN members are also deepening their economic ties with newly industrialized economies in Northeast Asia, and ASEAN members themselves are becoming active investors in less developed countries in Asia.<sup>73</sup> Therefore, ASEAN probably does not really need rigid internal economic arrangements.

ASEAN's economic cooperation could become a successful example of mutual cooperation between countries with many levels of economic development. However, economic cooperation may not be necessary, since ASEAN seems to succeed without it.

#### 1. *Trade Liberalization Plans—The Preferential Trading Arrangements (PTA) and an ASEAN Free Trade Area (AFTA)*

ASEAN's plan for regional trade liberalization started at the same time as its active political cooperation. In 1977, ASEAN foreign ministers concluded their preferential trade agreement (PTA), which was the first attempt to achieve trade liberalization among members. The agreement grants preferential tariff rates to members. Therefore, this arrangement violated the GATT requirements for legitimate regional arrangements. Furthermore, the agreement is insufficient as a regional trade liberalization scheme. The PTA's rule of origin requirement, whereby products must contain at least 50 percent ASEAN content to qualify for preferential treatment, greatly limited the PTA. This rule shows that the arrangement was motivated by a regional import-substitution development strategy, rather than open trade and investment goals. Members tried to minimize the impact of the scheme by excluding protected products. Members also considered granting preferential treatment to nontraded products, but probably did not implement the preferential treatment scheme.

The 1992 establishment of an ASEAN free trade area, consisting of the agreement on the common effective preferential tariff (CEPT) will probably end

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73. *Id.*

this stalemate. The AFTA plan is notably more ambitious and stronger than before.

First, CEPT greatly improved the economic performance and economic interdependence of ASEAN members. The effective free trade arrangements generally require a certain level of intragroup trade and proper economic activities. Therefore, chances are better this time for a regional trade arrangement.

Secondly, CEPT encouraged ASEAN countries to shift to a more liberal and export-oriented approach to trade than before. Before CEPT, ASEAN emphasized import-substituting economic development, a protectionist scheme at both the regional and individual level. AFTA still has some protectionist elements, but its overall stance is more liberal, focusing on enhancement of trade and foreign investment.

Third, CEPT contributed to a further cooperative trend. This trend is enhanced by the successful formation of an external political pressure group. ASEAN recently created local economic zones across several countries, and their success provided another motivating force for economic cooperation at the intergovernmental level. Singapore, which includes Southern Malaysia (Johor) and Eastern Sumatra, is a prime example of these successful economic zones.<sup>74</sup>

Fourth, the recent trend of forming or strengthening regional trade arrangements in other parts of the world has also been an important motivation to ASEAN members. The proliferation of regional free trade arrangements, such as the European integrated market and the North American Free Trade Area, influence or even threaten ASEAN. Projects in other regions, including those in less developed countries such as Latin America, tend to have the same effect.

These influences on ASEAN also affect Asia-Pacific in general, including APEC. APEC sometimes uses ASEAN's trade plan as a model, including its prospects and difficulties.

The heart of AFTA is its plan for intratrade liberalization by common effective preferential tariffs. The plan for liberalization is multilayered and flexible, reflecting the diverse economic development of ASEAN members. AFTA set out a timetable for this plan. Within fifteen years of January 1, 1993, all intraregional tariffs will be phased down to 0.5 percent and nontariff barriers on most manufactured products will be eliminated. Fifteen product groups, including less sensitive products, will be on a fast track, achieving tariff reduction in ten years (for lower tariff goods, seven years). However, sensitive products are excluded from this plan. Sensitive products include unprocessed agricultural goods and services and products restricted for the protection of national security, health, and cultural tradition (the restriction of this latter category should be temporary, subject to review after eight years). The implementation of this scheme still remains to be seen, and further difficulties may surface, considering the economic conditions

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74. *Id.*

and the trade policies of some members. The interaction between the AFTA scheme and the APEC plan will be interesting.

AFTA acceleration is also important. The fifth ASEAN summit in 1995 moved the target date for tariff reduction (to 0-5 percent) from 2003 (originally 2008) to 2000. By 2003, tariffs should be reduced to 0 percent, and AFTA will expand its liberalization into service sectors. AFTA members also agreed upon regional cooperation for intellectual property policy.<sup>75</sup> However, the outcome of this commitment still remains to be seen.

AFTA parallels APEC in many ways. Both agreements deal with the conditions they face, such as the economic diversity among members and the need for export-oriented economic development. Therefore, the AFTA project could become a model for subsequent APEC plans.

AFTA's trade liberalization scheme is a multilayered, progressive, flexible program that explicitly excludes sensitive products. This exclusion results from the difficulties inherent in a straightforward perfectionist liberalization scheme. ASEAN also needs a flexible structure, and a trade arrangement by ASEAN members should be multilayered.<sup>76</sup> This arrangement could be established by first forming a customs union of four similarly developed members, namely Thailand, Malaysia, the Philippines, and Indonesia. Second, this customs union would form a free trade area with Singapore, while still maintaining the union as a unit. In this free trade arrangement, the scope of liberalization will be limited to ASEAN-originated goods. Finally, ASEAN should undertake a special negotiation and trade agreement with Brunei. Now, Vietnam will be treated in the same way as Brunei. ASEAN members claim that they will make efforts to expand their AFTA liberalization to outsiders. How this commitment is related to the legal obligation of MFN treatment under the GATT is not clear, but this ambiguity may also be common to APEC's commitment to the MFN principle. The remaining issue in AFTA's protectionist approach is the rule-of-origin requirement. Although this requirement is becoming less stringent, the agreement requires that goods must contain at least 40 percent ASEAN components to qualify for the CEPT scheme.

AFTA has several safeguard measures built into its liberalization scheme. Article 6 of the agreement says that "member countries are allowed to suspend provisionally the CEPT preferences if rapidly growing imports cause serious injury to sectors producing like or directive competitive products."<sup>77</sup> This intra-regional safeguard is a reflection of the flexible, thus incomplete, approach of AFTA, and could become a model for the APEC scheme.

75. See *supra* note 7.

76. Hans Christopher Rieger, *ASEAN: A Free Trade Area or a Customs Union?* 132 FAR EASTERN ECON. REV. 58 (May 1, 1986).

77. See *supra* note 66.

As for harmonization at the regional level, AFTA has not yet drawn up any concrete plans. Concerns about nontariff barriers could lead to new efforts to harmonize technical standards among members. However, further progress in trade liberalization remains to be seen.

Finally, AFTA has a dispute settlement provision. Article 7 says that "differences between member countries are to be settled amicably between the parties concerned."<sup>78</sup> The meaning of this provision is not totally clear, but the provision does demonstrate ASEAN's preference for a consensual approach as opposed to a legalistic approach. For instance, the AFTA Council will interpret the CEPT; and, if necessary, the ASEAN economic ministers will review the Council's decisions.<sup>79</sup> This approach to dispute settlement should also be discussed in the planning of APEC.

## 2. *Industrial Cooperation Schemes*<sup>80</sup>

Through trial and error, ASEAN also attempted a regional industrial cooperation scheme. However, ASEAN's industrial projects have encountered problems common to those used in other regions.

Governmental industrial policies always run the risk of becoming harmful, or at least meaningless, to private manufacturers. ASEAN's economic development has been largely motivated by private initiatives, based upon the market mechanism. Therefore, governmental intervention in industrial policy might negatively influence such flexible private economic activities. Governmental plans, which are generally large-scaled, may also restrict the proper development of small and middle-sized enterprises, the main economic actors in ASEAN countries.

Governmental intervention also tends to have a protectionist effect, putting a damper on foreign multinational enterprises whose investment contributes greatly to ASEAN's economic development.

Furthermore, regional industrial arrangements may be influenced by governmental political or social preoccupations to the detriment of private economic activities. In industrial plans, most decisions, such as the allocation of resources and the setting-up of plants, are political. Political decisions are seldom economically reasonable.

These concerns influenced ASEAN's industrial planning and intensified its private, noninterventionist, outward-looking character. In 1980, ASEAN began its first industrial project (AIP), which tried to assign large-scale industrial projects to different member countries. These projects have generally failed because the private sector refused to cooperate. Therefore, ASEAN's next project, the ASEAN industrial complementation scheme, established in 1981, is more privately motivated. The project encouraged cooperation among member countries

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78. *Id.*

79. *Id.*

80. See *supra* note 66.

in the production of particular brands, also called the brand to brand complementation (BBC). The BBC has considerable cooperation from the ASEAN Chamber of Commerce in identifying and promoting projects. ASEAN gave the products under this project privileged treatment.

ASEAN's latest project is even more liberal and flexible. The ASEAN industrial joint ventures (AIJV) in 1983 utilized tariff preferences as investment incentives and encouraged joint ventures with foreign companies. Joint ventures only needed two ASEAN members to qualify, and non-ASEAN equity could be up to 49 percent (later raised to 60 percent). In addition, the local content of products must be at least 51 percent. With all this improvement in ASEAN industrial schemes, governmental planning may not be necessary.

However, during 1995 ASEAN's industrial cooperation scheme did not progress. Regional enterprises opposed the scheme as governmental intervention. ASEAN's industrial cooperation may fade away, without any significant achievement, leaving private initiative and foreign investment as the main motivators for development.<sup>81</sup>

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81. See *supra* note 6.

